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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 TOM M FRANKS,

12 Petitioner,

13 v.

14 SUPERIOR COURT OF STANISLAUS
15 COUNTY,

16 Respondent.

Case No. 1:20-cv-00136-EPG-HC

FINDINGS AND RECOMMENDATION TO
GRANT PETITIONER LEAVE TO
CONVERT PETITION TO CIVIL RIGHTS
ACTION UNDER 42 U.S.C. § 1983

ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE

17 Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus
18 pursuant to 28 U.S.C. § 2254. Given that success on Petitioner's claims would not necessarily
19 lead to his immediate or earlier release from confinement, the undersigned recommends that
20 Petitioner be granted leave to convert his petition for writ of habeas corpus to a civil rights action
21 under 42 U.S.C. § 1983.

22 **I.**

23 **DISCUSSION**

24 Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a
25 habeas petition and allows a district court to dismiss a petition before the respondent is ordered
26 to file a response, if it "plainly appears from the petition and any attached exhibits that the
27 petitioner is not entitled to relief in the district court." See McFarland v. Scott, 512 U.S. 849, 856
28 (1994).

1 **A. Federal Habeas Corpus Jurisdiction**

2 A claim falls within the “core of habeas corpus” when a prisoner challenges “the fact or
3 duration of his confinement” and “seeks either immediate release from that confinement or the
4 shortening of its duration.” Preiser v. Rodriguez, 411 U.S. 475, 489 (1973). The Ninth Circuit
5 has held that a “state prisoner’s claim [that] does not lie at ‘the core of habeas corpus’ . . . must
6 be brought, ‘if at all,’ under § 1983.” Nettles v. Grounds, 830 F.3d 922, 934 (9th Cir. 2016) (en
7 banc) (quoting Preiser, 411 U.S. at 487; Skinner v. Switzer, 562 U.S. 521, 535 n.13 (2011)).
8 Therefore, if “success on [Petitioner]’s claims would not necessarily lead to his immediate or
9 earlier release from confinement, [Petitioner]’s claim does not fall within ‘the core of habeas
10 corpus,’ and he must instead bring his claim under § 1983.” Nettles, 830 F.3d at 935 (quoting
11 Skinner, 562 U.S. at 535 n.13).

12 In the instant petition, Petitioner challenges the state court’s denial of his motion for
13 DNA testing on the grounds that the state court conducted the hearing on the motion without
14 Petitioner present and that Petitioner was represented by an attorney who had a conflict of
15 interest. (ECF No. 1 at 5, 7, 26–27).¹ Success on Petitioner’s claims would not necessarily lead
16 to his immediate or earlier release from confinement. See Skinner, 562 U.S. at 534 (“Success in
17 his suit for DNA testing would not ‘necessarily imply’ the invalidity of his conviction. While test
18 results might prove exculpatory, that outcome is hardly inevitable[.]”). As Petitioner’s claims do
19 not fall within “the core of habeas corpus,” Preiser, 411 U.S. at 487, they must be brought under
20 42 U.S.C. § 1983, Nettles, 830 F.3d at 931. Accordingly, Petitioner has failed to state a
21 cognizable claim for federal habeas corpus relief.

22 **B. Conversion to § 1983 Civil Rights Action**

23 “If the complaint is amenable to conversion on its face, meaning that it names the correct
24 defendants and seeks the correct relief, the court may recharacterize the petition so long as it
25 warns the *pro se* litigant of the consequences of the conversion and provides an opportunity for
26 the litigant to withdraw or amend his or her complaint.” Nettles, 830 F.3d at 936 (quoting Glaus
27 v. Anderson, 408 F.3d 382, 388 (7th Cir. 2005)). The Court notes that habeas corpus and

28 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

prisoner civil rights actions differ in a variety of respects, such as the proper defendants, filing fees, exhaustion requirements, and restrictions on future filings (e.g., the Prison Litigation Reform Act's three-strikes rule). Nettles, 830 F.3d at 936 (citing Robinson v. Sherrod, 631 F.3d 839, 841 (7th Cir. 2011); Glaus, 408 F.3d at 388).

If Petitioner chooses to convert the instant matter to a civil rights action, Petitioner will be required to submit a civil rights complaint form that names the proper defendants, seeks appropriate relief, and is signed under penalty of perjury.² The filing fee for § 1983 civil rights cases is \$350, and Petitioner is required to pay the full amount by way of deductions from income to Petitioner's trust account, even if granted in forma pauperis status. See 28 U.S.C. § 1915(b)(1). Petitioner also may, at his option, voluntarily dismiss his habeas petition without prejudice to refiling his claims as a § 1983 civil rights action. However, Petitioner is forewarned that dismissal and refiling may subject Petitioner to a possible statute of limitations bar as well as other complications as set forth above.

II.

RECOMMENDATION & ORDER

Accordingly, the undersigned HEREBY RECOMMENDS that Petitioner be granted leave to convert his petition for writ of habeas corpus to a civil rights action under 42 U.S.C. § 1983.

Further, the Clerk of Court is DIRECTED to randomly assign a District Court Judge to the present matter.

This Findings and Recommendation is submitted to the assigned United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." The assigned United States District Court Judge will then review the Magistrate Judge's ruling pursuant to 28

² The Court notes that Petitioner did not sign his petition for writ of habeas corpus.

1 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified
2 time may waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d
3 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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5 IT IS SO ORDERED.

6 Dated: **February 10, 2020**

/s/ Eric P. Grogan
7 UNITED STATES MAGISTRATE JUDGE